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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,703	12/23/2003	S. Donald Jamison	02057.0173	6215
22930	7590	01/20/2006	EXAMINER	
HOWREY LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DR, SUITE 200 FALLS CHURCH, VA 22042-2924			FLANIGAN, ALLEN J	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/743,703

**Applicant(s)**

JAMISON ET AL.

**Examiner**

Allen J. Flanigan

**Art Unit**

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The declaration fails to specify at least one error relied upon to support the reissue application. As stated in MPEP § 1414, "In identifying the error, it is sufficient that the reissue oath /declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or invalid . . . It is not sufficient for an oath /declaration to merely state "this application is being filed to correct errors in the patent which may be noted from the changes made in the disclosure. " Rather, the oath /declaration must specifically identify an error. In addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See *In re Constant*, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. denied, 484 U.S. 894 (1987). Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of " ... failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient "error" statement since applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa. Such a statement would be no better than saying in the reissue oath or declaration that "this application is being filed to correct errors

in the patent which may be noted from the change made by adding new claim 10." In both cases, the error has not been identified."

The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the reissue application ***up to the time of filing of the oath/declaration*** arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414 (applicant's declaration omits the highlighted language).

Claims 1-39 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Claims 23-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The introduction of new matter is not permitted in a reissue application. If, by copying claims, applicant is adding claims which are unsupported by the original patent disclosure, lack of written description is deemed to exist. See In

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re Molins, 368 F.2d 258, 261, 151 USPQ 570, 572 (CCPA 1966) and In re Spencer, 273 F.2d 181, 124 USPQ 175 (CCPA 1959).

In this application, all of the claims of Brost recite a feature not disclosed by the original patent application that the current reissue application is based on. Specifically, when comparing the disclosure of Brost and the original patent application, the tubes of Brost, as recited in claim 1, inter alia, are formed by a pair of side walls *joined* by a pair of end walls. As claimed and as seen in Fig. 3A, these end walls are “bifurcated . . . to define planar portions disposed substantially normal to said side walls”; these planar portions engage in “substantial surface to surface contact” with the walls of the collecting tank. Independent claims 1, 8, and 19 of Brost all recite this feature (copied by the applicants in their added claims). Similarly, although claim 16 does not employ the “planar portions” terminology, it is comparable in scope in that it recites


said step of fabricating said tubes includes forming each of said tubes from a first and second tube half, each of said tube halves including one of said side walls and part of both end walls and further includes forming said tube halves into a generally U-shaped configuration by bending both edges of a flat strip *to an angle substantially perpendicular to said flat strip, said edges thereafter comprising said parts of said end walls* and said flat strip between said end walls comprising one of said side walls, and further includes bending said edges multiple times to form end walls of folded configuration (emphasis added).

This claim is clearly directed to the embodiments shown in Figs. 6A-6H, and described in the bridging paragraph of columns 5-6 of Brost. No structure in the applicant's original disclosure reads on this claimed feature. The only structure corresponding to the claimed "planar portions" in the applicant's disclosure are the raised flanges 50, 52 which, as clearly shown, do not extend normal to the flat portions 46 corresponding to the claimed "side walls" of Brost. It is also clear that these mating flanges do not engage in "substantial surface to surface contact" with the walls 70, 72 of the header but rather engage in surface contact with the flanges of an adjacent tube half. Further, there is no disclosure of the fabricating step of bending both edges of a flat strip perpendicular to the flat strip to form the end walls that seal against the collecting tank, nor the step of further bending the edges multiple times to form end walls of a folded configuration. Applicant's invention involves flanges 50, 52 that are bent to be parallel to (and spaced from) the plane of the planar portion 48. The flanges 50, 52 are not bent multiple times to form end walls of a folded configuration. Applicant's flanges form an abutting configuration. Applicant's invention relies on a seal between lateral edge portions 64 of these flanges and the inner wall of the collecting tank; Brost relies on a seal between planar portions or end "walls" that extend between spaced side walls of the tubes. This feature, lacking in the applicant's patent disclosure, clearly provides a more substantial seal between the tube ends and the collecting tank for reduced likelihood of leakage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (571) 272-4910. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Allen J. Flanigan  
Primary Examiner  
Art Unit 3753

AJF